
Subject: notice of motion for sanctions / Re: FOIA 2012-190

From: Warren Havens (warren.havens@sbcglobal.net)

To: rjk@telcomlaw.com;

Cc: Gary.Schonman@fcc.gov; Moris.Martinez@fcc.gov; Richard.Sippel@fcc.gov; Pamela.Kane@fcc.gov; cole@fhhlaw.com; wright@khlaw.com; jsheldon@fr.com; rmiller@gardere.com; czdebski@eckertseamans.com; feldman@fhhlaw.com; mjp@catalanoplache.com; ajc@catalanoplache.com; ESchwalb@eckertseamans.com; GHull@eckertseamans.com; richards@khlaw.com; jstobaugh@telesaurus.com; rhj@commlawgroup.com; Brian.Carter@fcc.gov; Mary.Gosse@fcc.gov; Patricia.Ducksworth@fcc.gov;

Date: Monday, April 23, 2012 4:53 PM

Mr. Keller,

Your application for review filing, a copy of which you send with the below email, is frivolous and sanctionable including under Section 1.52 and 1.29.

This email is notice that if you do not withdraw the frivolous and sanctionable filing by the end of this week, then the FOIA requester, Skybridge Spectrum Foundation, which I represent, will pursue legal action against you and you individually, along with your client.

This will involve action outside (in addition to) FCC action as needed.

It is also objectionable for you to address FCC staff in this (or any other) FCC official matter by use of a first name.

Warren Havens
President
Skybridge Spectrum Foundation

From: Bob Keller <rjk@TelComLaw.com>
To: 'Gary Schonman' <Gary.Schonman@fcc.gov>
Cc: 'Moris Martinez' <Moris.Martinez@fcc.gov>; warren.havens@sbcglobal.net; Richard L. Sippel <Richard.Sippel@fcc.gov>; 'Pamela Kane' <Pamela.Kane@fcc.gov>; cole@fhhlaw.com; wright@khlaw.com; jsheldon@fr.com; rmiller@gardere.com; czdebski@eckertseamans.com; feldman@fhhlaw.com; mjp@catalanoplache.com; ajc@catalanoplache.com; ESchwalb@eckertseamans.com; GHull@eckertseamans.com; richards@khlaw.com; warren.havens@sbcglobal.net; jstobaugh@telesaurus.com; rhj@commlawgroup.com; 'Brian Carter' <Brian.Carter@fcc.gov>; Mary Gosse <Mary.Gosse@fcc.gov>; 'Patricia Ducksworth' <Patricia.Ducksworth@fcc.gov>
Sent: Monday, April 23, 2012 3:22 PM
Subject: RE: FOIA 2012-190

Gary,

Please find attached a courtesy electronic copy of an application for review in the referenced matter, directed to the Office of General Counsel, and filed today with the Office of the Secretary. Hard copies have been served by mail.

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Bob Keller <rjk@telcomlaw.com>
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

From: Moris Martinez [mailto:Moris.Martinez@fcc.gov]
Sent: Wednesday, April 11, 2012 3:11 PM
To: 'warren.havens@sbcglobal.net'; 'rjk@telcomlaw.com'
Cc: Gary Schonman
Subject: FOIA 2012-190

Dear Messrs. Havens and Keller:

Attached is our response to the above-referenced FOIA request. If you have any questions, please contact Gary Schonman at 202-418-1795.

Thank you

Moris Martinez
Enforcement Bureau
Investigations and Hearings Division



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Investigations & Hearings Division
445 12th Street, S.W., Room 4-C330
Washington, DC 20554

April 11, 2012

Via email to warren.havens@sbcglobal.net
Warren Havens, President
Skybridge Spectrum Foundation
2509 Stuart Street
Berkeley, CA 94705

Via email to rjk@telcomlaw.com
Robert J. Keller, Esq.
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033

Re: Freedom of Information Act Request
FOIA Control No. 2012-190

Dear Messrs. Havens and Keller:

This letter responds to the above-referenced request submitted under the Freedom of Information Act ("FOIA") by Skybridge Spectrum Foundation ("Skybridge"). Therein, Skybridge seeks a copy of a Compact Disc ("CD") containing electronically-scanned documents that was submitted by Maritime Communications/Land Mobile, LLC ("Maritime") to the Commission's Enforcement Bureau on February 17, 2012, pursuant to an Order of the Presiding Judge in EB Docket No. 11-71.¹

Pursuant to Section 0.461(d)(3) of the Commission's Rules, this office, by letter, dated February 23, 2012, transmitted a copy of the subject FOIA request to Maritime for comment. Thereafter, on March 5, 2012, Maritime submitted a letter opposing release of the CD to Skybridge,² and, on March 15, 2012, Skybridge replied with arguments to the contrary.³ Based on the information submitted by Maritime and Skybridge as well as our own independent review of the materials contained on the CD, we hereby grant the FOIA request.

¹ See *Maritime Communications/Land Mobile, LLC*, Order, FCC 12M-11 (ALJ, rel. Feb. 16, 2012). Both Maritime and Skybridge are parties in EB Docket No. 11-71.

² See Letter from Robert J. Keller, Esq., Counsel for Maritime, to Gary Schonman, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 5, 2012 ("Maritime Response").

³ See Letter from Warren Havens, President of Skybridge, to Gary Schonman, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 15, 2012 ("Skybridge Reply").

Maritime maintains that the CD should be withheld because: (a) the undisclosed real party in interest behind the subject FOIA request is Warren Havens who is using Skybridge, a purported non-profit entity, to avoid paying FOIA processing fees;⁴ (b) Skybridge's use of the FOIA in this instance is "contrary to the express order of the presiding judge with jurisdiction over the hearing case [in EB Docket No. 11-71];"⁵ (c) the materials sought are Enforcement Bureau, not Commission, records;⁶ and (d) the Enforcement Bureau lacks the delegated authority to act on FOIA requests.⁷ Skybridge counters that: (a) Maritime has failed to rely on any FOIA exemption as a basis for withholding the materials from release;⁸ (b) Section 1.325(b) of the Commission's Rules specifies that parties in hearing cases seeking copies of Commission records must proceed under the FOIA;⁹ (c) Skybridge's request for a fee waiver is irrelevant to whether the subject CD should be released;¹⁰ and (d) there is nothing in the FOIA or the Commission's rules that categorically exempts from release records that are in the control of the Enforcement Bureau.¹¹

Under the FOIA and the FCC's implementing rules, records that are not routinely available to the public will be released upon request unless they contain information that is exempt under the FOIA from mandatory disclosure. Section 552(b) of the FOIA, 5 U.S.C. § 552(b) contains nine categories of records that are exempt from disclosure. Maritime, however, does not claim that *any* of them is applicable here. Indeed, it does not refer to any FOIA exemptions whatsoever in its Response. For example, Maritime does not assert that any documents on the CD contain trade secrets or commercial or financial information which would support a claim of confidentiality.¹² This is significant because the exemptions provide the legal basis under the FOIA upon which records may be withheld. Instead, Maritime interposes arguments that are without merit. In this regard, we agree with Skybridge that the matter of whether it is entitled to a fee waiver is irrelevant in this instance to the question of whether the CD should be released, particularly given our determination below that Skybridge's request for a fee waiver is moot. Additionally, we agree with Skybridge that Section 1.325(b) of the Commission's Rules, 47 C.F.R. § 1.325(b), authorizes parties to avail themselves of the FOIA when seeking production of documents from the Commission in hearing cases. Finally, as the custodian of the records in question, the Enforcement Bureau has the authority to rule on the subject FOIA request. See Section 0.461(d)(2), 47 C.F.R. § 0.461(d)(2), which specifies that the

⁴ Maritime Response at p. 1.

⁵ Maritime Response at p. 2.

⁶ Id.

⁷ Id.

⁸ Skybridge Reply at p. 1.

⁹ Skybridge Reply at p. 2.

¹⁰ Skybridge Reply at p. 3.

¹¹ Id.

¹² See 5 U.S.C. § 552(b)(4).

Messrs. Havens and Keller
April 11, 2012
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bureau or office where the subject records are located is the entity empowered to act on a FOIA request for those records.

Although Maritime did not produce the CD with a claim of confidentiality as to all or any part of the contents of the CD, we independently reviewed the materials on the CD to determine, whether any FOIA exemption is applicable, particularly Exemption 4 relating to commercially sensitive information that could adversely affect Maritime's competitive posture. We conclude that no FOIA exemption is applicable in this instance.

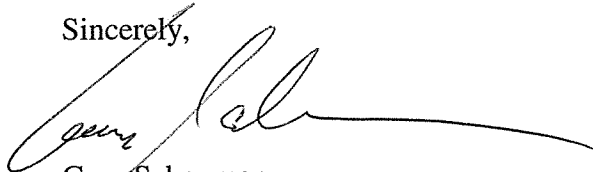
Accordingly, we hereby grant Skybridge's FOIA request. If Maritime believes our treatment of this FOIA request is in error, it may file an application for review of this action with the FCC's Office of General Counsel within 10 days of the date of this letter. 47 C.F.R. § 0.461(i). We intend to produce the subject CD, including all of its contents, to Skybridge if no such application for review is timely filed.

We are required by the FOIA, 5 U.S.C. § 552(a)(4)(A)(i), and Section 0.470(a) of the Commission's rules, 47 C.F.R. § 0.470(a), to charge FOIA requesters fees for processing their FOIA requests. The cost associated with processing this request is less than \$15.00 and therefore *de minimis*.¹³ Consequently, no charge will be assessed with regard to this FOIA request, and Skybridge's request for a fee waiver is dismissed as moot.

If Skybridge believes this to be a denial of its request, it may file an application for review with the FCC's Office of General Counsel within 30 days of the date of this letter. 47 C.F.R. §§ 0.461(j) and 1.115.

If you have any questions, please contact the undersigned at 202-418-1795.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Schonman', with a long horizontal flourish extending to the right.

Gary Schonman
Special Counsel
Investigations & Hearings Division
Enforcement Bureau

¹³ We note that in the ordinary course a fee would have been assessed for review of the subject documents. However, the Enforcement Bureau undertook its review of the CD in its capacity as a party in EB Docket No. 11-71 and did not conduct a separate review for the purposes of the instant FOIA request.